

**What the Americans with Disabilities Act of 1990  
Requires of Curbside Intercity Bus Operators**

Testimony Before the Subcommittee on  
Highways, Transit, and Pipelines  
Of the Committee on Transportation and Infrastructure  
Of the U.S. House of Representatives

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Bus Safety and ADA Regulatory Compliance”

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Mr. Chairman, Vice-Chairman, and Subcommittee Members, thank you for the opportunity to address this Subcommittee. I'm Marilyn Golden. Since 1988 I've been a Policy Analyst at the Disability Rights Education and Defense Fund (DREDF), a national law and policy center on disability rights. I've been closely involved with the Americans with Disabilities Act throughout all the stages of its proposal and passage and now during its implementation, with a special focus on the transportation requirements. I have represented the interests of the disability community on ADA transportation as an author, a trainer, and an advocate in policy development, and have been involved in many ADA-related transportation papers and projects, as shown in my attached resume.

More than fifteen years ago, I watched with exhilaration and pride as the first President Bush signed the Americans with Disabilities Act, granting many millions of people with disabilities in this country comprehensive civil rights. Exhilaration because it was the culmination of work by hundreds if not thousands of people with disabilities and their families and colleagues, and pride because my colleagues and I at the Disability Rights Education and Defense Fund, a national law and policy center on disability civil rights, had made a significant contribution to the making of the ADA. We've been deeply involved in its unfolding ever since.

Almost eight years ago, one of the last pieces of the ADA fell into place, when the US Department of Transportation issued the rules<sup>1</sup> guaranteeing disability access to transportation in the important area of intercity bus travel. As our comments to DOT had stated, the Montgomery bus boycott was in 1955. More than 40 years later, people with disabilities were still waiting for the right to ride the bus. How long, we asked, must we wait?

As this DOT regulation on over-the-road buses (OTRB's) – those are high-floor buses with a baggage compartment underneath – as that regulation was implemented in the late 90's and ever since, people with disabilities were, at last, given access to this key link in our nation's transportation grid. We saw companies that had supported the ADA and companies that had resisted it, come into compliance with that landmark law. In my own life, what once would have been impossible became unremarkable when, one day a few years ago, I needed transport between two major cities in Texas, my state of origin, and I had a smooth and anonymous trip on a lift-equipped OTRB.

But in the last few years, the rise of curbside operators that completely disregard the ADA means that no longer are all transportation opportunities available to people with disabilities. I will address what the ADA requires of these companies. There are quite a few requirements – I'll have time for only the major ones here today. I've attached an article with more of the details to my written testimony.

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<sup>1</sup> 37 C.F.R. Subpart H of Part 37

The key to bus access for mobility impaired people who, like I do, use wheelchairs, is the ADA's requirement that all newly purchased or leased buses be wheelchair accessible.<sup>2</sup> For ordinary city buses, that can mean a bus with a lift or a low-floor bus with a ramp. But for the high-floor OTRB's used on intercity runs, lift-equipped buses are the most common way to comply. Companies like Greyhound and Peter Pan use such buses.

But most curbside operators do not purchase or lease *new* buses; they obtain *used* buses. Used buses means they fall under what the ADA calls "interim service" requirements<sup>3</sup> – they're the same requirements a big company like Greyhound must follow at first *until its entire bus fleet is accessible* so that it graduates out of this category. But in the case of an operator using *used* buses, like the operators we're talking about, they would be required to follow the Interim Service requirement indefinitely.

That requirement is that the company is allowed to require a rider with a disability to give up to 48 hours advance notice,<sup>4</sup> *but then it must provide accessible service* – that is, service in an accessible bus, a bus equipped with a wheelchair lift or other device making it possible for a person using a wheelchair to ride on that bus without transferring out of his or her wheelchair.

In narrow circumstances, such a company, if it's small, may provide an equivalent service<sup>5</sup> instead – that is, service in a different vehicle, as long as it departs as quickly as the main vehicle, goes as directly and quickly to the same destination, costs the same amount, and provides an equal service in every other way. This is really only practical with an accessible bus. Though if a company is going, say, from New York to Boston at noon on Tuesday, and has several buses leaving at the same time for the same destination point, it would be OK under the equivalency standard for only one of them to provide wheelchair access. Other than in this narrow circumstance, the equivalency provision doesn't help the curbside operators very much – they are still required by the ADA to provide an accessible vehicle on *any* run, as long as an individual with a disability provides 48 hours advance notice.

There are also rest stop requirements<sup>6</sup> and training requirements,<sup>7</sup> described in the attached article.

In addition, the company must comply with the ADA's Information Collection provisions,<sup>8</sup> which require:

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<sup>2</sup> 49 C.F.R. § 37.183.

<sup>3</sup> 49 C.F.R. § 37.193.

<sup>4</sup> 49 C.F.R. § 37.193(a)(1)(i).

<sup>5</sup> 49 C.F.R. § 37.183(b)(2).

<sup>6</sup> 49 C.F.R. § 37.201.

<sup>7</sup> 49 C.F.R. § 37.209.

<sup>8</sup> 49 C.F.R. § 37.213.

1. That people requesting accessible service must be issued a particular form confirming the request;
2. That if the company fails to provide accessible service, a form must go to the passenger documenting this failure;
3. and that a summary of the records of requests for accessible service made under the “48 hours notice” rule be filed with the Federal Motor Carrier Safety Administration annually, including how many requests for accessible service were made, and how many times the accessible service was provided.

Similar record-keeping requirements apply to the provision of equivalent service. Companies must also report how many passengers with disabilities use bus lifts annually, how many new and used buses they have acquired, and whether those buses are accessible, as well as the total number of buses in their fleet.

SUMMARY OF DEPARTMENT OF TRANSPORTATION (DOT)  
FINAL REGULATION ON OVER-THE-ROAD BUSES (OTRB'S),  
AMERICANS WITH DISABILITIES ACT (ADA),  
37 CFR PART 49,  
PUBLISHED SEPTEMBER 28, 1998

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## OVERVIEW

In many respects, the new regulation is a victory for people with disabilities. It requires all vehicles which are newly purchased or leased by large intercity bus companies (like Greyhound) to be accessible. It contains strong language about the rights of people with disabilities to receive truly equal services, to ride in their own wheelchairs on the bus rather than being carried to a bus seat, and not to be restricted because a transit provider speculates there may be a safety risk. Further, a big problem area in the proposed regulation, the issue of rest stops, is much improved in the final version.

## WHAT'S ALREADY REQUIRED PRIOR TO THIS REGULATION

This regulation only applies to over-the-road buses (OTRB's) used by private companies. OTRB's are high-floor buses with baggage compartments underneath. New OTRB's used by *publicly funded* transit agencies are already required by the ADA to be accessible, under DOT's original 1991 ADA regulation. And transit vehicles which are not OTRB's (that is, urban transit buses and other vehicles such as large vans and rail cars) are already required to be accessible to various degrees under DOT's original 1991 ADA regulation, whether privately or publicly funded.

## SUMMARY OF THE NEW REGULATION

1. From now until October 2000, for service provided by large companies (like Greyhound), or until October 2001, for service provided by small companies, OTRB companies must comply with the current requirements for over-the road-bus service. This means that, on 48-hour advance notice, they must provide boarding assistance to people with disabilities, and must transport passengers' wheelchairs.
2. Beginning October 2000, for service provided by large companies (such as Greyhound), or 2001, for service provided by small companies, all new buses purchased or leased by fixed-route OTRB companies must be accessible. (Fixed route transit systems are those which run along prescribed routes according to fixed schedules.) Half the fleets of large OTRB operators must be accessible by October 2006; the entire fleets of these companies must be accessible by October 2012. However, if the company has not obtained enough buses in the 6 or 12 years to meet the 50% or 100% requirements, has not loaded up on inaccessible buses during the two-year phase in period between 1998 and 2000, and has otherwise complied effectively with this

regulation's requirements, the Secretary of DOT can grant a time extension beyond the 6 and 12-year dates.

3. Beginning October 2001/2002 (for large/small operators respectively), fixed-route OTRB companies must provide service in an accessible bus to a passenger who requests it with 48 hours advance notice. (Before those dates, OTRB companies must provide boarding assistance onto inaccessible buses, if accessible buses are not available.) If the individual with a disability does not provide the advance notice the operator requires, the operator shall nevertheless provide the service if it can do so by making a reasonable effort. This interim service must continue until the OTRB companies' fleets are 100 percent accessible. Some small fixed route operators may never have a fleet 100% of which consists of accessible buses, e.g. a small company which exclusively or primarily purchases or leases used buses. Such an operator must continue to comply with these "interim service" requirements indefinitely for any service not provided with entirely accessible buses.

4. There are two special situations affecting fixed-route service by small companies. A small company may provide equivalent service instead of acquiring accessible buses. This service must permit passengers to travel in their own wheelchairs and must provide people with disabilities service that is equivalent to that provided to non-disabled passengers, in terms of time, destination, cost, service availability, etc. This could be provided by an alternate vehicle (e.g. a van). Also, a small company that operates mostly charter/tour service but has a small amount of fixed-route service (up to 25%) can meet all its requirements through 48-hour advance reservations.

5. Beginning October 2001/2002, charter and tour companies (and any other private demand/response transit service providers) must provide service in an accessible bus to a passenger who requests it with 48 hours advance notice. (Before those dates, charter and tour companies must provide boarding assistance onto inaccessible buses, if accessible buses are not available.) Demand/response transit systems are those for which a vehicle is dispatched or routed in response to a potential rider's request.

6. At rest stops, OTRB bus companies must provide passengers time and assistance needed to leave and re-enter the bus to use the facilities, whether or not the bus is accessible. If the bus company owns, leases, controls, or contracts with a rest stop facility, it must make sure the facility meets the ADA's accessibility requirements.

7. If there are more wheelchair users who wish to ride a bus than there are securement areas on the bus, the OTRB company must offer the additional passengers boarding assistance and the opportunity to transfer to a vehicle seat.

8. Companies must train employees and maintain lifts and other accessibility equipment so that they provide reliable service. Training must include proper operation and maintenance of accessibility features and equipment, boarding assistance, securement of mobility aids, sensitive and appropriate interaction with passengers with disabilities, handling and storage of mobility devices, and familiarity with these requirements. Refresher training is also required to maintain proficiency.

9. It is discrimination for any OTRB company:

- to deny transportation to a person with a disability due to the disability;
- to use or request the use of persons other than the company's employees for routine boarding or other assistance to passengers with disabilities, unless the passenger requests or consents to assistance from such persons;
- to require or request a passenger with a disability to reschedule his or her trip, or travel at a time other than the time the passenger has requested, in order to receive transportation; or
- to fail to provide equivalent reservation service to passengers with disabilities.

10. Companies must communicate effectively with each other to provide accessible service through all segments of an interline trip (which is when a passenger transfers to another company's bus to complete a trip).

11. As of the date of this writing, DOT is proposing to require OTRB companies to collect information on the provision of interim service (see point 3) and the provision of equivalent service (see point 4). DOT has a 90-day comment period on the proposed requirements for information collection (all the other requirements are final and not open for comment).

12. When first published in 1998, this regulation required OTRB companies to pay compensation to passengers in cases of denied boarding, when the denial was a failure to comply with the regulation. However, the OTRB industry took the Department of Transportation to court, and the provision requiring denied boarding compensation was struck. The remainder of the 1998 regulation remains fully intact.

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**Qualifications**

Marilyn Golden is a Policy Analyst at the Disability Rights Education and Defense Fund (DREDF), our nation's foremost national law and policy center on disability civil rights, with offices in Berkeley, California and Washington, D.C. She has been closely involved with the Americans with Disabilities Act throughout all the stages of its proposal and passage and now during its implementation. A highly lauded ADA trainer, she has directed and led numerous in-depth programs on the ADA which have given thousands of people comprehensive knowledge on how to make this law a reality. She is the principal author of the DREDF publication *The ADA, an Implementation Guide* (the "Bluebook"), DREDF's highly respected ADA curriculum.

Since the ADA's passage, Ms. Golden has continued to play a key role in policy development on a federal level in the areas of transportation and architectural barriers. She was appointed by the President to the U.S. Architectural and Transportation Barriers Compliance Board (also known as the Access Board) in 1996 and served on the Access Board until 2005 as a very strong and effective advocate for the interests of people with disabilities. She has also played a key role as a national transportation advocate, leading the struggle for many of the policy victories during and since the ADA to provide better public transportation for people with disabilities. She has authored or coordinated many ADA-related transportation papers and projects, as listed below.

2004: Co-wrote overview report for the National Council on Disability on disability transportation issues, *The Current State of Transportation for People with Disabilities in the United States*.

2004: Chosen to participate on Transportation Cooperative Research Program (TCRP) panels for projects on ADA Paratransit Demand Estimation (B-28) and ADA Paratransit Late Cancellation / No-Show Policies (SB-11).

2002 to 2004, and again in 2006: Served on planning committee for Federal Transit Administration's Regional Dialogues on ADA Transportation which brought



- together disability advocates and the transit industry to communicate about disability transportation issues.
- 1999 – 2001: Worked with Nelson\Nygaard Consulting Associates on research for the Metropolitan Transportation Commission to evaluate the accessibility for people with disabilities of the San Francisco Bay Area Translink System, which uses smart card technology to link Bay Area transit systems.
  - 1996 to present: Conducted extensive training programs on ADA transportation, including several multi-day programs as co-trainer with Russell Thatcher of TranSystems, well-known national expert on the ADA and transit operations.
  - 1996 to present: Lectured on the field of disability transportation, including: conducting numerous web casts for the disability community, hosted by the regional Disability and Business Technical Assistance Centers, and conducted workshops at disability rights conferences hosted by the National Council on Independent Living and the National Association of Protection and Advocacy Systems.
  - 1998 – 2000: Participated extensively in the development of reports drafted by DREDF for the National Council on Disability evaluating the enforcement efforts of disability rights laws by federal agencies; drafted the transportation sections in their entirety.
  - 1996: Was chosen by the National Council on Disability (NCD) to lead the Transportation Group at NCD's Policy Summit
  - 1994 – 1996: Directed the ADA Paratransit Compliance Study for Project ACTION that evaluated the compliance of transit agencies with the paratransit requirements of the ADA.
  - 1990 – 1991: Member of the Federal Advisory Committee formed by the U.S. Department of Transportation to assist in the development of the DOT ADA regulation (representing DREDF)
  - 1986 – 1988: Chaired Transportation Committee of California Attorney General's Advisory Commission on Disability